SUPREME COURT, U. S.

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MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-5978

JAMES KING,

Petitioner,

vs.

STATE OF NEW JERSEY,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of New Jersey

BRIEF FOR RESPONDENT IN OPPOSITION

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Opinions Below

The opinion of the Appellate Division of the Superior Court of New Jersey is contained in the appendix to the petition, A2. The denial of certification by the New Jersey Supreme Court is contained in the appendix at A1 and is reported at 63 N. J. 568.

Jurisdiction

Petitioner invokes jurisdiction based upon 28 U.S.C. § 1915. However, this section concerns the authorization of proceedings in forma pauperis. Jurisdiction would appear to more properly be asserted under 28 U.S.C. § 1257 (3).

Questions Presented

Respondent would add to the questions presented by the petitioner the following question:

1. Has petitioner raised any substantial federal question or constitutional issue requiring review by this court?

Statement

Petitioner, James King, was tried for the murder of Hazel Savage whose badly beaten semi-nude body was found by the police in King's apartment bedroom after he had someone call the authorities, claiming he had killed a man. The defense to the first degree murder charge was basically that of insanity, grounded on the defendant's bizarre story that he believed he had fought off a transvestite who was making sexual advances upon him. According to his story, King believed Miss Savage was in the kitchen while he beat up the transvestite with a board and did not realize that the body lying on his bedroom floor was Miss Savage until the police told him it was the body of a woman.

The defense experts sought to establish that King was suffering from a mental disease, alcoholic psychosis,

which was responsible for his delusion, rendering him insane at the time of the event. Rebuttal medical testimony was presented by the State. There was also evidence of a more rational motive, i.e., that King had thought Miss Savage wanted to rob him.

At the close of testimony, defense counsel requested a charge to the jury to the effect that even if they did not find petitioner to be legally insane, he may be guilty only of manslaughter should he be deemed to have acted reasonably in response to a delusional provocation. The trial judge rejected the charge as improper in not comporting with the New Jersey law of homicide which does not recognize a delusional provocation as being a legally sufficient provocation to reduce murder to manslaughter. The jury was fully charged on first and second degree murder, the correct law of provocation with regard to manslaughter, as well as legal insanity.

In his brief to the Appellate Division of the Superior Court the petitioner conceded that the instructions as given by the trial judge were in accord with the present law of New Jersey. It was urged that the Court should adopt a more subjective test of provocation as proposed by the New Jersey Model Penal Code Commission and in effect in some other states. The Appellate Division declined this request to change the law of homicide. This was again urged upon the New Jersey Supreme Court in petitioner's Petition for Certification, which also declined to do so through its denial of certification.

Petitioner had also raised in the Appellate Division his argument of reversible error in the prosecutor's summation remarks. The Court rejected the claim of prejudicial comment. This claim of error was not argued to the New Jersey Supreme Court, the Petition for Certification being limited solely to the law of provocation issue.

ARGUMENT

The matters raised by petitioner do not constitute federal questions entitling petitioner to review by the United States Supreme Court.

It is fundamental that the authority of the United States Supreme Court to review final judgments of the state courts is dependent upon those judgments necessarily involving federal questions and rights. Such is implicit in the statutory grant of appellate jurisdiction, 28 U.S.C. § 1257. As petitioner seeks relief through certiorari, his claims must meet the requirements of section 3. However, the validity of a treaty or statute of the United States is not in question, nor is petitioner contesting the validity of existing state statutes as repugnant to the Constitution. While petitioner asserts a violation of the Fourteenth Amendment guarantee of due process and equal protection of law with regard to his question on the trial judge's charge on provocation, such a mere averment of constitutional violation does not suffice to raise the issue to one of a substantial federal question entitling petitioner to review.

Rather, this matter is particularly one not involving a federal question. The sum and substance of petitioner's complaint is his dissatisfaction with the present law of homicide in New Jersey, which does not recognize his theory of diminished responsibility and delusional provocation for the reduction of murder to manslaughter. His arguments to the Appellate Division of Superior Court and the New Jersey Supreme Court were directed not at proving federal constitutional error—which was not even alleged—but at attempting to convince the courts of the state to change the law by judicial fiat to suit his

particular defense. These arguments should more properly have been addressed to the state legislature. It is clear that the wisdom, and evolution, of New Jersey's substantive criminal statutes is solely a matter of state law and does not constitute a federal question. Petitioner is therefore not entitled to invoke the jurisdiction of this Court on this matter.

It is also equally clear that the question of prejudicial comment in the prosecutor's summation is not a federal question. Petitioner does not define it as such nor was it so contended when it was raised in the Appellate Division. This was a nonfederal matter which was fully and properly disposed of by application of general state law precluding review by the United States Supreme Court. It may be superfluous to also note that this claim of reversible error was not presented to the New Jersey Supreme Court and is for this reason also not properly raised in the present Petition.

We further submit that the nature of the questions raised by petitioner are only of particular individual concern and therefore do not present the "special and important reasons" for the discretionary granting of certiorari should the matters be construed as presenting a federal question.

CONCLUSION

For the reasons stated above, Respondent says that a Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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